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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,172	09/17/2003	John W. Schnell	JK01463B	6313
28268	7590	02/14/2006	EXAMINER	
THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286				CHUKWURAH, NATHANIEL C
ART UNIT		PAPER NUMBER		
3721				

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/665,172	SCHNELL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nathaniel C. Chukwurah	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 November 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,10-13,37,39-41 and 47-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,10-13,37,39-41 and 47-54 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 September 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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 Claims 1-3, 10-13, 37, 39-41 and 47-~~50~~ are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (US 6,431,428).

With regard to claim 1, Chen discloses an articulating pusher assembly comprising: an articulating pusher (32), an adapter (pivot point) pivotally coupled with the articulating pusher (32), a casing (30) coupled with the adapter, and coupled with the nail loading assembly (20); a spool assembly (24) coupled with casing (30) and nail loading assembly (20).

The articulating pusher is enabled to pivot prior to tightening the pusher in a selected position and upon contacting the nail to fully engages the nail (see fig 2).

With regard to claim 2, the nail loading assembly (20) comprises a housing, which includes inherently a cover.

With regard to claim 3, the adjustable angle magazine (20) includes a universal adapter assembly (22) and adjustable assembly (222, 23).

With regard to claim 10, the adjustable angle magazine of Chen is end-loading magazine.

With regard to claim 11, the adjustable angle magazine is a modular.

With regard to claim 12, the nail gun of Chen is pneumatic as shown in Figure 2.

With regard to claim 13, the nail gun of Chen is to comprise clutch assembly.

With regard to claim 37, Chen discloses an articulating pusher assembly comprising: means (30) for coupling with the nail loading assembly, means (32) for engaging a nail within the nail loading assembly (20) coupled with the means (casing 30) for coupling with nail loading assembly, the engaging means being enabled to pivot prior to tightening the pusher in a selected position and upon contacting the nail to fully engage the nail (see fig 2), wherein the casing is coupled with a spool (24), and rotationally coupled with adapter (pivot point).

With regard to claim 39, the means (32) for engaging a nail is an articulating pusher assembly, pivotally coupled with the casing (30).

With regard to claim 40, the magazine of Chen is adjustable.

With regard to claim 41, the adjustable angle magazine comprises a universal adapter assembly (22).

With regard to claim 47, the angled magazine of Chen is end-load magazine.

With regard to claim 48, the nail loading assembly is a modular.

With regard to claim 49, the nail gun of Chen is a pneumatic nail gun

With regard to claim 50, the nail gun of Chen is to comprise clutch assembly.

With regard to claim 51, the reference of Chen discloses an articulating pusher assembly for use in a nail loading assembly of a nail gun (Fig. 2), comprising: a casing (30) slidably coupled within the nail loading assembly (20); an adapter (pivot point) pivotally coupled to the casing (30); and an articulating (32) pusher configured to engage a nail (32) loaded into the nail loading assembly, the articulating pusher (32) rotatably coupled to the adapter (pivot point), wherein the articulating pusher is constructed to rotate relative to the adapter (pivot point) upon contacting the nail to fully engage the nail (col. 3, lines 35-36).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 52, 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Oda (US 5,322,189).

With regard to claims 52, 53 and 54, the angle magazine of Chen discloses all claimed subject matter but lacks an adapter selectively pivotable to rotate into a plane of operation which includes the nail.

The reference of Oda teaches adapter selectively pivotable to rotate into a plane of operation which includes the nail. See (Figs. 3, 4, 5).

In view of the teaching of Oda, it would have been obvious to one skilled in the art at the time of the invention to modify magazine of Chen by providing an adapter selectively pivotable to rotate into a plane of operation which includes the nail in order to be positioned within the fastener support rail and abuts on the rear end of the row of the fasteners (col. 4, lines 66-68).

***Response to Arguments***

Applicant's arguments filed 11/17/2005 have been fully considered but they are not persuasive.

Applicant argues that the pusher of Chen does not pivot upon contacting the nail to fully engage with the nail.

The Examiner disagree with applicant because as in the rejection above, the articulating pusher of Chen is enabled to pivot prior to tightening the pusher in a selected position and upon contacting the nail to fully engages the nail. See (col. 3, lines 14-15, 18-19 and 35-36).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

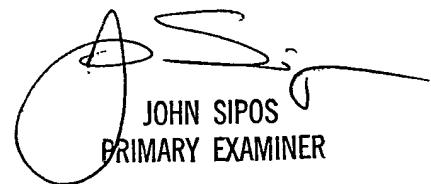
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathaniel C. Chukwurah whose telephone number is (571) 272-4457. The examiner can normally be reached on M-F 6:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NC

February 6, 2006.



JOHN SIPOS  
PRIMARY EXAMINER